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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92257; File Nos. SR-CboeBYX-2021-012, SR-CboeBZX-2021-035, SRCboeEDGA-2021-011, SR-CboeEDGX-2021-025]

### **Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes, as Modified by Amendments No. 1, Relating to the Exchanges' Process for Re-Opening Securities Listed on other National Securities Exchanges Following the Resumption of Trading After a Halt, Suspension, or Pause Outside of Regular Trading Hours**

June 24, 2021

#### **I. Introduction**

On April 26, 2021, Cboe BYX Exchange, Inc. (“CboeBYX”), Cboe BZX Exchange, Inc. (“CboeBZX”), Cboe EDGA Exchange, Inc. (“CboeEDGA”) and Cboe EDGX Exchange, Inc. (“CboeEDGX,” and collectively, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes to amend each Exchange’s process for re-opening trading of securities listed on other national securities exchanges outside of regular trading hours. The proposed rule

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

changes were published for comment in the *Federal Register* on May 14, 2021.<sup>3</sup> On June 21, 2021, the Exchanges each filed an Amendment No. 1 to their respective proposed rule changes (“Amendments No. 1”).<sup>4</sup> The Commission received no comments on the proposed rule changes. This order approves the proposed rule changes, as modified by Amendments No. 1.

II. Description of the Proposed Rule Changes, as Modified by Amendments No.1

The Exchanges have proposed to harmonize the manner by which they re-open trading in a security listed on other national securities exchanges if the trading halt, suspension or pause in that security is lifted during one of the Exchanges’ extra-hours

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<sup>3</sup> See Securities Exchange Act Release Nos. 91804 (May 10, 2021), 86 FR 26583 (May 14, 2021) (SR-CboeBYX-2021-012); 91801 (May 10, 2021), 86 FR 26594 (May 14, 2021) (SR-CboeBZX-2021-035); 91802 (May 10, 2021), 86 FR 26574 (May 14, 2021) (SR-CboeEDGA-2021-011) (“CboeEDGA Notice”); 91803 (May 10, 2021), 86 FR 26558 (May 14, 2021) (SR-CboeEDGX-2021-025) (“CboeEDGX Notice”) (collectively, “Notices”). The proposed rule changes are nearly identical.

<sup>4</sup> In the Amendments No. 1, the Exchanges: (i) Added additional justification for the proposed rule changes, stating that the proposed re-opening process would provide certainty as to how orders will be handled across Tape A, B, and C securities and promote consistency with the re-opening process used by the Exchanges in other circumstances; (ii) stated that allowing one second to elapse prior to initiating the mid-point re-opening would ensure sufficient time for the midpoint to accurately reflect the market; and (iii) made technical and conforming edits. Because the Amendments No. 1 do not materially alter the substance of the proposed rule changes and make conforming and technical changes, the Amendments No. 1 are not subject to notice and comment. The Amendments No. 1 are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebyx-2021-012/srcboebyx2021012-8931890-245403.pdf>; <https://www.sec.gov/comments/sr-cboebzx-2021-035/srcboebzx2021035-8931888-245385.pdf>; <https://www.sec.gov/comments/sr-cboeedga-2021-011/srcboeedga2021011-8931893-245388.pdf>; and <https://www.sec.gov/comments/sr-cboeedgx-2021-025/srcboeedgx2021025-8931886-245402.pdf>.

sessions.<sup>5</sup> The Exchanges' respective processes for the re-opening of trading in securities listed on other national security exchanges under such circumstances vary depending on whether the securities are listed on the New York Stock Exchange LLC ("NYSE") ("Tape A"), or are listed on exchanges other than NYSE ("Tape B" and "Tape C").<sup>6</sup> Specifically, Tape A securities that resume trading after a halt, suspension, or pause during an extra-hours trading session will be automatically re-opened pursuant each of the Exchanges' contingent opening procedures, as described in each of the Exchanges' rules,<sup>7</sup> after one second has passed following an Exchange's receipt of the first NBBO following such resumption of trading.<sup>8</sup> As a result, when the Exchanges re-open Tape A securities during their respective extra-hours sessions today, orders are handled in time sequence and placed on each Exchange's book, routed, cancelled, or executed in accordance with the terms of the order.

With respect to Tape B and C securities, the Exchanges' rules<sup>9</sup> provide that the re-opening process following the resumption of trading after a trading halt, suspension, or pause during each of the Exchanges' extra-hours sessions will occur at the midpoint of

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<sup>5</sup> Outside of regular trading hours, the Exchanges operate certain extra-hours sessions. See CboeBYX Rules 1.5(c), (r), and (ee); CboeBZX Rules 1.5(c), (r), and (ee); CboeEDGA Rules 1.5(r), (s), and (ii); CboeEDGX Rules 1.5(r), (s), and (ii).

<sup>6</sup> The Exchanges state that Tape B securities are those listed on exchanges other than NYSE and Nasdaq and Tape C securities are those listed on Nasdaq. See Notices, supra note 3.

<sup>7</sup> See CboeBYX Rule 11.23(d); CboeBZX Rule 11.24(d); CboeEDGA Rule 11.7(d); CboeEDGX Rule 11.7(d).

<sup>8</sup> See CboeBYX Rule 11.23(e)(3); CboeBZX Rule 11.24(e)(3); CboeEDGA Rule 11.7(e)(3); CboeEDGX Rule 11.7(e)(3).

<sup>9</sup> See CboeBYX Rule 11.23(e)(1); CboeBZX Rule 11.24(e)(1); CboeEDGA Rule 11.7(e)(1); CboeEDGX Rule 11.7(e)(1).

the: (i) first NBBO subsequent to the first reported trade and first two-sided quotation on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

The Exchanges have proposed to harmonize the different processes for re-opening Tape A, and Tape B and C securities during the extra-hours sessions by: (1) Amending the Exchanges' automated re-opening processes for Tape A securities to provide for the execution of orders at the midpoint of the NBBO; and (2) eliminating unnecessary differences between the process utilized for Tape A securities and the process used for Tape B and C securities. Thus, as proposed, each of the Exchanges' relevant rules<sup>10</sup> would provide that during extra-hours sessions, the re-opening process for Tape A securities will occur at the midpoint of the NBBO after one second has passed following the Exchange's receipt of the first NBBO following the resumption of trading after a halt, suspension, or pause. In addition, the Exchanges propose to amend their respective processes for re-opening Tape B and C securities to mirror their proposed processes for Tape A securities, except that the Exchanges would require the primary listing market to have begun quoting a security before it initiates its own re-opening process. As amended, each of the Exchanges' rules<sup>11</sup> would provide that, during extra-hours trading sessions,

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<sup>10</sup> See proposed rules CboeBYX Rule 11.23(e)(1)(C); CboeBZX Rule 11.24(e)(1)(C); CboeEDGA Rule 11.7(e)(1)(C); CboeEDGX Rule 11.7(e)(1)(C).

<sup>11</sup> See proposed rules CboeBYX Rule 11.23(e)(1)(C); CboeBZX Rule 11.24(e)(1)(C); CboeEDGA Rule 11.7(e)(1)(C); CboeEDGX Rule 11.7(e)(1)(C).

the re-opening process for Tape B and C securities will occur at the midpoint of the NBBO after one second has passed following the publication of the first two-sided quotation by the listing exchange following the resumption of trading after a halt, suspension, or pause. The Exchanges have stated that, to simplify the re-opening during these timeframes, the Exchanges are not proposing to retain a separate trigger that would allow the re-opening process to be initiated immediately when the Exchanges receive both a two-sided quotation and a trade from the listing exchange.<sup>12</sup>

### III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule changes, as modified by Amendments No. 1, and finds that they are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder.<sup>13</sup> Specifically, the Commission finds that the proposals, as modified by Amendments No.1, are consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

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<sup>12</sup> In addition to these proposed changes to the reopening process, the Exchanges also proposed other technical and non-substantive changes to their rules in order to facilitate the substantive changes explained above. See Notices, supra note 3. CboeEDGA and CboeEDGX also proposed non-substantive changes to conform CboeEDGA Rule 11.7 and CboeEDGX 11.7 to CboeBZX Rule 11.24. See CboeEDGA Notice and CboeEDGX Notice, supra note 3.

<sup>13</sup> 15 U.S.C. 78f. In approving these proposed rule changes, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

As described above, the Exchanges seek to harmonize their respective processes for re-opening trading in a security when a trading halt, suspension, or pause in that security is lifted and trading in that security resumes outside regular trading hours. In the Exchanges' view, applying their midpoint re-opening procedures in these circumstances, regardless of whether a security is a Tape A, B, or C security, would: (1) Provide greater consistency with the process currently used by the each of the Exchanges in other circumstances, (2) provide greater certainty as to how orders will be handled across security types, and (3) potentially provide executions that better reflect the applicable market for the security.<sup>15</sup> The Exchanges have stated that the proposal to not retain a separate trigger whereby the reopening process for Tape B and C securities would be initiated immediately when the Exchange receives both a two-sided quotation and a trade from the listing exchange would harmonize the reopening process with that for Tape A securities, simplify the re-opening process to be followed during these timeframes, and ensure that sufficient time is provided for the midpoint to accurately reflect the market in those securities.<sup>16</sup>

The Commission believes that the proposals are reasonably designed to facilitate a more orderly and efficient re-opening process following the resumption of trading after a trading halt, suspension, or pause during each of the Exchanges' extra-hours sessions. By providing a more consistent and harmonized approach to each of the Exchanges' re-

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<sup>15</sup> See Notices, supra note 3, and Amendments No. 1, supra note 4.

<sup>16</sup> See Amendments No. 1, supra note 4.

opening procedures, the proposals should promote greater certainty, reduce the likelihood of confusion, and facilitate the resumption of orderly trading under such circumstances.

Therefore, the Commission finds that the proposals, as modified by Amendments No. 1, are consistent with the Act.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule changes (SR-CboeBYX-2021-012, SR-CboeBZX-2021-035, SR-CboeEDGA-2021-011, and SR-CboeEDGX-2021-025), as modified by Amendments No.1, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).